

underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 433

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Rhonda S. King

AN ACT

RELATING TO SEX OFFENDERS; REQUIRING A SEX OFFENDER TO REGISTER ALL EMAILS, SCREEN NAMES AND ANY OTHER ELECTRONIC IDENTITIES USED BY THE SEX OFFENDER; REQUIRING A SEX OFFENDER TO NOTIFY THE COUNTY SHERIFF OF ANY SUBSEQUENT ELECTRONIC IDENTITIES THAT A SEX OFFENDER INTENDS TO USE PRIOR TO USING THEM TO COMMUNICATE WITH OTHERS; CLARIFYING PROVISIONS OF THE SEX OFFENDER REGISTRATION AND NOTIFICATION ACT; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2007.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 29-11A-3 NMSA 1978 (being Laws 1995, Chapter 106, Section 3, as amended by Laws 2007, Chapter 68, Section 1 and by Laws 2007, Chapter 69, Section 5) is amended to read:

"29-11A-3. DEFINITIONS.--As used in the Sex Offender

underscored material = new
[bracketed material] = delete

1 Registration and Notification Act:

2 A. "conviction" means a conviction in any court of
3 competent jurisdiction and includes a deferred sentence, but
4 does not include a conditional discharge;

5 B. "electronic identity" means an identity used for
6 communication with others over the internet and includes an
7 email address, screen name, user name or any other identity or
8 name used in a chat room, game room, instant message,
9 discussion group, message board, bulletin board, blog, social
10 networking web site, virtual or digital world or any type of
11 internet forum where communication with others is available;

12 [~~B.~~] C. "institution of higher education" means a:

13 (1) private or public post-secondary
14 educational institution;

15 (2) trade school; or

16 (3) professional school;

17 [~~C.~~] D. "registration requirement" means any
18 requirement set forth in Section 29-11A-4 NMSA 1978 that
19 requires a sex offender to register, provide information,
20 including a DNA sample, renew, revise or change registration
21 information or provide written notice or disclosure regarding
22 the sex offender's status as a sex offender;

23 [~~D.~~] E. "sex offender" means a person who:

24 (1) is a resident of New Mexico who is
25 convicted of a sex offense pursuant to state, federal, tribal

underscored material = new
[bracketed material] = delete

1 or military law;

2 (2) changes residence to New Mexico, when that
3 person has been convicted of a sex offense pursuant to state,
4 federal, tribal or military law;

5 (3) does not have an established residence in
6 New Mexico, but lives in a shelter, halfway house or
7 transitional living facility or stays in multiple locations in
8 New Mexico and who has been convicted of a sex offense pursuant
9 to state, federal, tribal or military law; or

10 (4) is a resident of another state and who has
11 been convicted of a sex offense pursuant to state, federal,
12 tribal or military law, but who is:

13 (a) employed full time or part time in
14 New Mexico for a period of time exceeding fourteen days or for
15 an aggregate period of time exceeding thirty days during any
16 calendar year, including any employment or vocation, whether
17 financially compensated, volunteered or for the purpose of
18 government or educational benefit; or

19 (b) enrolled on a full-time or part-
20 time basis in a private or public school or an institution of
21 higher education in New Mexico; and

22 [E.] F. "sex offense" means any of the following
23 offenses or their equivalents in any other jurisdiction:

24 (1) aggravated criminal sexual penetration or
25 criminal sexual penetration in the first, second, third or

.175794.1SA

underscored material = new
[bracketed material] = delete

1 fourth degree, as provided in Section 30-9-11 NMSA 1978;

2 (2) criminal sexual contact in the fourth
3 degree, as provided in Section 30-9-12 NMSA 1978;

4 (3) criminal sexual contact of a minor in the
5 second, third or fourth degree, as provided in Section
6 30-9-13 NMSA 1978;

7 (4) sexual exploitation of children, as
8 provided in Section 30-6A-3 NMSA 1978;

9 (5) sexual exploitation of children by
10 prostitution, as provided in Section 30-6A-4 NMSA 1978;

11 (6) [~~kidnaping~~] kidnapping, as provided in
12 Section 30-4-1 NMSA 1978, when the victim is less than eighteen
13 years of age and the offender is not a parent of the victim;

14 (7) false imprisonment, as provided in Section
15 30-4-3 NMSA 1978, when the victim is less than eighteen years
16 of age and the offender is not a parent of the victim;

17 (8) aggravated indecent exposure, as provided
18 in Section 30-9-14.3 NMSA 1978;

19 (9) enticement of child, as provided in
20 Section 30-9-1 NMSA 1978;

21 (10) incest, as provided in Section 30-10-3
22 NMSA 1978, when the victim is less than eighteen years of age;

23 (11) child solicitation by electronic
24 communication device, as provided in Section 30-37-3.2 NMSA
25 1978;

.175794.1SA

underscored material = new
[bracketed material] = delete

1 (12) solicitation to commit criminal sexual
2 contact of a minor in the second, third or fourth degree, as
3 provided in Sections 30-9-13 and 30-28-3 NMSA 1978; or

4 (13) attempt to commit any of the sex offenses
5 set forth in Paragraphs (1) through (10) of this subsection, as
6 provided in Section 30-28-1 NMSA 1978."

7 Section 2. Section 29-11A-4 NMSA 1978 (being Laws 1995,
8 Chapter 106, Section 4, as amended) is amended to read:

9 "29-11A-4. REGISTRATION OF SEX OFFENDERS--INFORMATION
10 REQUIRED--CRIMINAL PENALTY FOR NONCOMPLIANCE.--

11 A. A sex offender residing in this state shall
12 register with the county sheriff for the county in which the
13 sex offender resides.

14 B. A sex offender who is a resident of New Mexico
15 shall register with the county sheriff no later than ten days
16 after being released from the custody of the corrections
17 department, a municipal or county jail or a federal, military
18 or tribal correctional facility or detention center or being
19 placed on probation or parole. A sex offender who changes
20 [his] residence to New Mexico shall register with the county
21 sheriff no later than ten days after [his] arrival in this
22 state. When a sex offender registers with the county sheriff,
23 [he] the sex offender shall provide the following registration
24 information:

25 (1) [his] the sex offender's legal name and

.175794.1SA

underscored material = new
[bracketed material] = delete

1 any other names or aliases that [~~he~~] the sex offender is using
2 or has used;

3 (2) [~~his~~] the sex offender's date of birth;

4 (3) [~~his~~] the sex offender's social security
5 number;

6 (4) [~~his~~] the sex offender's current address;

7 (5) [~~his~~] the sex offender's place of
8 employment;

9 (6) every electronic identity established or
10 used by the sex offender;

11 [~~(6)~~] (7) the sex offense for which [~~he~~] the
12 sex offender was convicted; and

13 [~~(7)~~] (8) the date and place of [~~his~~] the sex
14 offense conviction.

15 C. A sex offender who is a resident of another
16 state but who is employed in New Mexico or attending public or
17 private school or an institution of higher education in New
18 Mexico shall register with the county sheriff for the county in
19 which the sex offender is working or attending school or an
20 institution of higher education. [~~D. A sex offender who is a~~
21 ~~resident of another state but who is employed in New Mexico or~~
22 ~~attending public or private school or an institution of higher~~
23 ~~education in New Mexico] The sex offender shall register [~~with~~
24 ~~the county sheriff~~] no later than ten days after beginning work
25 or school. When the sex offender registers with the county~~

.175794.1SA

underscored material = new
[bracketed material] = delete

1 sheriff, [~~he~~] the sex offender shall provide the following
2 registration information:

3 (1) [~~his~~] the sex offender's legal name and
4 any other names or aliases that [~~he~~] the sex offender is using
5 or has used;

6 (2) [~~his~~] the sex offender's date of birth;

7 (3) [~~his~~] the sex offender's social security
8 number;

9 (4) [~~his~~] the sex offender's current address
10 in [~~his~~] the sex offender's state of residence and, if
11 applicable, the address of [~~his~~] the sex offender's place of
12 lodging in New Mexico while [~~he is~~] working or attending school
13 or an institution of higher education;

14 (5) [~~his~~] the sex offender's place of
15 employment or the name of the school [~~he~~] the sex offender is
16 attending;

17 (6) every electronic identity established or
18 used by the sex offender;

19 [~~(6)~~] (7) the sex offense for which [~~he~~] the
20 sex offender was convicted; and

21 [~~(7)~~] (8) the date and place of [~~his~~] the sex
22 offense conviction.

23 [~~E.~~] D. When a sex offender registers with a county
24 sheriff, the sheriff shall obtain:

25 (1) a photograph of the sex offender and a

.175794.1SA

underscored material = new
[bracketed material] = delete

1 complete set of the sex offender's fingerprints;

2 (2) a description of any tattoos, scars or
3 other distinguishing features on the sex offender's body that
4 would assist in identifying the sex offender; and

5 (3) a DNA sample [~~of his DNA~~] for inclusion in
6 the sex offender DNA identification system pursuant to the
7 provisions of the DNA Identification Act.

8 E. When a sex offender who is registered intends to
9 use an electronic identity that was not provided to the county
10 sheriff, the sex offender shall send written notice of the
11 electronic identity to the county sheriff prior to using that
12 identity to communicate with others over the internet.

13 F. When a sex offender who is registered changes
14 [~~his~~] residence within the same county, the sex offender shall
15 send written notice of [~~his~~] the change of address to the
16 county sheriff no later than ten days after establishing [~~his~~]
17 the new residence.

18 G. When a sex offender who is registered changes
19 [~~his~~] residence to a new county in New Mexico, the sex offender
20 shall register with the county sheriff of the new county no
21 later than ten days after establishing [~~his~~] the new residence.
22 The sex offender shall also send written notice of the change
23 in residence to the county sheriff with whom [~~he~~] the sex
24 offender last registered no later than ten days after
25 establishing [~~his~~] the new residence.

.175794.1SA

underscoring material = new
[bracketed material] = delete

1 H. When a sex offender who is registered or
2 required to register does not have an established residence,
3 but lives in a shelter, halfway house or transitional living
4 facility or stays in multiple locations in New Mexico, the sex
5 offender shall register with the county sheriff for each county
6 in which the sex offender is living or temporarily located.
7 The sex offender shall register no later than ten days after a
8 change in [~~his~~] living arrangements or temporary location.

9 I. When a sex offender who is registered or
10 required to register is employed, begins a vocation or is
11 enrolled as a student at an institution of higher education in
12 New Mexico, the sex offender shall disclose [~~his~~] the sex
13 offender's status as a sex offender in writing to the county
14 sheriff for the county in which the institution of higher
15 education is located, the law enforcement entity responsible
16 for the institution of higher education and the registrar for
17 the institution of higher education no later than ten days
18 after beginning employment, beginning a vocation or enrolling
19 at the institution of higher education. The sex offender shall
20 also send written notice of any change regarding [~~his~~]
21 employment, vocation or enrollment status at an institution of
22 higher education to the county sheriff, the law enforcement
23 entity and the registrar no later than ten days after the
24 change in [~~his~~] employment, vocation or enrollment status.

25 J. When a sex offender who is registered or

underscored material = new
[bracketed material] = delete

1 required to register is employed or is enrolled as a student at
2 a public or private school in New Mexico, the sex offender
3 shall disclose [~~his~~] the sex offender's status as a sex
4 offender in writing to the county sheriff for the county in
5 which the school is located and to the principal of the school
6 no later than ten days after beginning employment or enrolling
7 at the school. The sex offender shall also send written notice
8 of any change regarding [~~his~~] employment or enrollment status
9 at a school to the county sheriff and the principal no later
10 than ten days after the change in [~~his~~] employment or
11 enrollment status.

12 K. When a sex offender who is registered or
13 required to register is employed, begins a vocation or
14 volunteers [~~his~~] services, regardless of whether the sex
15 offender receives payment or other compensation, the sex
16 offender shall disclose [~~his~~] the sex offender's status as a
17 sex offender in writing to [~~his~~] the sex offender's employer,
18 supervisor or person similarly situated. The written
19 disclosure shall be made immediately upon beginning [~~his~~]
20 employment, vocation or volunteer service.

21 L. Following [~~his~~] initial registration pursuant to
22 the provisions of this section:

23 (1) a sex offender [~~required to register~~
24 ~~pursuant to the provisions of~~] convicted of any of the sex
25 offenses enumerated in Subsection D of Section 29-11A-5 NMSA

.175794.1SA

underscored material = new
[bracketed material] = delete

1 1978 or their equivalents shall renew [~~his~~] registration with
2 the county sheriff not less than once in each ninety-day period
3 following the date of the sex offender's initial registration
4 for the entirety of [~~his~~] the sex offender's natural life; and

5 (2) a sex offender [~~required to register~~
6 ~~pursuant to the provisions of~~] convicted of any of the sex
7 offenses enumerated in Subsection E of Section 29-11A-5 NMSA
8 1978 or their equivalents shall annually renew [~~his~~] the sex
9 offender's registration with the county sheriff prior to
10 December 31 of each subsequent calendar year for a period of
11 ten years.

12 M. Notwithstanding the provisions of Paragraph (2)
13 of Subsection L of this section, if a sex offender is convicted
14 a second or subsequent time for a sex offense set forth in
15 Subsection E of Section 29-11A-5 NMSA 1978, [~~he~~] the sex
16 offender shall renew [~~his~~] registration with the county sheriff
17 not less than once in each ninety-day period following the date
18 of the sex offender's initial registration for the entirety of
19 [~~his~~] the sex offender's natural life.

20 N. A sex offender who willfully or knowingly fails
21 to comply with the registration requirements set forth in this
22 section is guilty of a fourth degree felony and shall be
23 sentenced pursuant to the provisions of Section 31-18-15 NMSA
24 1978. A sex offender who willfully or knowingly fails to
25 comply with the registration requirements set forth in this

.175794.1SA

underscoring material = new
~~[bracketed material]~~ = delete

1 section after a first or subsequent conviction for a violation
2 pursuant to this section is guilty of a third degree felony and
3 shall be sentenced pursuant to the provisions of Section
4 31-18-15 NMSA 1978. The willful failure to comply with any
5 registration requirement set forth in this section shall be
6 deemed part of a continuing transaction or occurrence. A
7 conviction pursuant to this subsection shall not be considered
8 a felony for purposes of the imposition of sentencing
9 enhancements pursuant to the provisions of Section 31-18-17
10 NMSA 1978.

11 0. A sex offender who willfully or knowingly
12 provides false information when complying with the registration
13 requirements set forth in this section is guilty of a fourth
14 degree felony and shall be sentenced pursuant to the provisions
15 of Section 31-18-15 NMSA 1978. A sex offender who willfully or
16 knowingly provides false information when complying with the
17 registration requirements set forth in this section after a
18 first or subsequent conviction for a violation pursuant to this
19 section is guilty of a third degree felony and shall be
20 sentenced pursuant to the provisions of Section 31-18-15 NMSA
21 1978. The willful providing by a sex offender of false
22 information with respect to the registration requirements set
23 forth in this section shall be deemed part of a continuing
24 transaction or occurrence. A conviction pursuant to this
25 subsection shall not be considered a felony for purposes of the

.175794.1SA

underscored material = new
[bracketed material] = delete

1 imposition of sentencing enhancements pursuant to the
2 provisions of Section 31-18-17 NMSA 1978."

3 Section 3. Section 29-11A-7 NMSA 1978 (being Laws 1995,
4 Chapter 106, Section 7, as amended) is amended to read:

5 "29-11A-7. NOTICE TO SEX OFFENDERS OF DUTY TO
6 REGISTER.--

7 A. A court shall provide a sex offender convicted
8 in that court with written notice of [~~his~~] the sex offender's
9 duty to register pursuant to the provisions of the Sex Offender
10 Registration and Notification Act. The written notice shall be
11 included in judgment and sentence forms provided to the sex
12 offender. The written notice shall inform the sex offender
13 that [~~he~~] the sex offender is required to:

14 (1) register with the county sheriff for the
15 county in which the sex offender will reside or, if the sex
16 offender will not have an established residence, with the
17 county sheriff for each county in which the sex offender will
18 live or be temporarily located pursuant to the provisions of
19 the Sex Offender Registration and Notification Act;

20 (2) report subsequent changes of address
21 pursuant to the provisions of the Sex Offender Registration and
22 Notification Act;

23 (3) notify the county sheriff of an electronic
24 identity that is not registered and that the sex offender
25 intends to use, prior to using that identity to communicate

.175794.1SA

underscoring material = new
[bracketed material] = delete

1 with others over the internet, pursuant to the provisions of
2 the Sex Offender Registration and Notification Act;

3 [~~3~~] (4) notify the county sheriff of the
4 county [~~he~~] the sex offender resides in if the sex offender
5 intends to move to another state and that the sex offender is
6 required to register in the other state pursuant to the
7 provisions of the Sex Offender Registration and Notification
8 Act;

9 [~~4~~] (5) disclose [~~his~~] the sex offender's
10 status as a sex offender in writing when [~~he~~] the sex offender
11 begins employment, begins a vocation or enrolls as a student at
12 an institution of higher education in New Mexico to the county
13 sheriff for the county in which the institution of higher
14 education is located and to the law enforcement entity and
15 registrar for the institution of higher education pursuant to
16 the provisions of the Sex Offender Registration and
17 Notification Act;

18 [~~5~~] (6) provide written notice of any change
19 regarding [~~his~~] the sex offender's employment, vocation or
20 enrollment status at an institution of higher education to the
21 county sheriff, the law enforcement entity and the registrar
22 pursuant to the provisions of the Sex Offender Registration and
23 Notification Act;

24 [~~6~~] (7) disclose [~~his~~] the sex offender's
25 status as a sex offender in writing, when [~~he~~] the sex offender

.175794.1SA

underscored material = new
[bracketed material] = delete

1 begins employment or enrolls as a student at a private or
2 public school in New Mexico, to the county sheriff for the
3 county in which the school is located and to the principal of
4 the school pursuant to the provisions of the Sex Offender
5 Registration and Notification Act;

6 [~~(7)~~] (8) provide written notice of any change
7 regarding [~~his~~] the sex offender's employment or enrollment
8 status at a public or private school in New Mexico to the
9 county sheriff and the principal of the school pursuant to the
10 provisions of the Sex Offender Registration and Notification
11 Act;

12 [~~(8)~~] (9) disclose [~~his~~] the sex offender's
13 status as a sex offender in writing to [~~his~~] the sex offender's
14 employer, supervisor or other person similarly situated when
15 [~~he~~] the sex offender begins employment, begins a vocation or
16 volunteers [~~his~~] the sex offender's services, regardless of
17 whether the sex offender receives payment or other
18 compensation, pursuant to the provisions of the Sex Offender
19 Registration and Notification Act; and

20 [~~(9)~~] (10) read and sign a form that indicates
21 that the sex offender has received the written notice and that
22 a responsible court official, designated by the chief judge for
23 that judicial district, has explained the written notice to the
24 sex offender.

25 B. The corrections department, a municipal or

.175794.1SA

underscored material = new
[bracketed material] = delete

1 county jail or a detention center, at the time of release of a
2 sex offender in its custody, shall provide a written notice to
3 the sex offender of [~~his~~] the sex offender's duty to register,
4 pursuant to the provisions of the Sex Offender Registration and
5 Notification Act. The written notice shall inform the sex
6 offender that [~~he~~] the sex offender is required to:

7 (1) register with the county sheriff for the
8 county in which the sex offender will reside or, if the sex
9 offender will not have an established residence, with the
10 county sheriff for each county in which the sex offender will
11 live or be temporarily located pursuant to the provisions of
12 the Sex Offender Registration and Notification Act;

13 (2) report subsequent changes of address
14 pursuant to the provisions of the Sex Offender Registration and
15 Notification Act;

16 (3) notify the county sheriff of any
17 electronic identity that is not registered and that the sex
18 offender intends to use, prior to using that identity to
19 communicate with others over the internet, pursuant to the
20 provisions of the Sex Offender Registration and Notification
21 Act;

22 [~~3~~] (4) notify the county sheriff of the
23 county [~~he~~] the sex offender resides in if the sex offender
24 intends to move to another state and that the sex offender is
25 required to register in the other state pursuant to the

.175794.1SA

underscored material = new
[bracketed material] = delete

1 provisions of the Sex Offender Registration and Notification
2 Act;

3 ~~[(4)]~~ (5) disclose ~~[his]~~ the sex offender's
4 status as a sex offender in writing when ~~[he]~~ the sex offender
5 begins employment, begins a vocation or enrolls as a student at
6 an institution of higher education in New Mexico to the county
7 sheriff for the county in which the institution of higher
8 education is located and to the law enforcement entity and
9 registrar for the institution of higher education pursuant to
10 the provisions of the Sex Offender Registration and
11 Notification Act;

12 ~~[(5)]~~ (6) provide written notice of any change
13 regarding ~~[his]~~ the sex offender's employment, vocation or
14 enrollment status at an institution of higher education to the
15 county sheriff, the law enforcement entity and the registrar
16 pursuant to the provisions of the Sex Offender Registration and
17 Notification Act;

18 ~~[(6)]~~ (7) disclose ~~[his]~~ the sex offender's
19 status as a sex offender in writing, when ~~[he]~~ the sex offender
20 begins employment or enrolls as a student at a private or
21 public school in New Mexico, to the county sheriff for the
22 county in which the school is located and to the principal of
23 the school pursuant to the provisions of the Sex Offender
24 Registration and Notification Act;

25 ~~[(7)]~~ (8) provide written notice of any change

underscoring material = new
[bracketed material] = delete

1 regarding ~~[his]~~ the sex offender's employment or enrollment
2 status at a public or private school in New Mexico to the
3 county sheriff and the principal of the school pursuant to the
4 provisions of the Sex Offender Registration and Notification
5 Act;

6 ~~[(8)]~~ (9) disclose ~~[his]~~ the sex offender's
7 status as a sex offender in writing to ~~[his]~~ the sex offender's
8 employer, supervisor or other person similarly situated when
9 ~~[he]~~ the sex offender begins employment, begins a vocation or
10 volunteers ~~[his]~~ the sex offender's services, regardless of
11 whether the sex offender receives payment or other
12 compensation, pursuant to the provisions of the Sex Offender
13 Registration and Notification Act; and

14 ~~[(9)]~~ (10) read and sign a form that indicates
15 that the sex offender has received the written notice and that
16 a responsible corrections department official, designated by
17 the secretary of corrections, or a responsible municipal or
18 county jail official or detention center official has explained
19 the written notice to the sex offender.

20 C. A court, the corrections department, a municipal
21 or county jail or a detention center shall also provide written
22 notification regarding a sex offender's release to the sheriff
23 of the county in which the sex offender is released and to the
24 department of public safety.

25 D. The department of public safety, at the time it

.175794.1SA

underscoring material = new
[bracketed material] = delete

1 is notified by officials from another state that a sex offender
2 will be establishing residence in New Mexico, shall provide
3 written notice to the sex offender of [~~his~~] the sex offender's
4 duty to register pursuant to the provisions of the Sex Offender
5 Registration and Notification Act."

6 Section 4. EFFECTIVE DATE.--The effective date of the
7 provisions of this act is July 1, 2009.

8 - 19 -

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25